IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4276 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

YASINKHAN JIVANKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR SJ DAVE, AGP for respondent-State.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 05/07/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated 18-2-2000, passed by the Police Commissioner, Ahmedabad City and he has been

declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. The detaining authority took into consideration one offences registered against the petitioner, so also the statements of two anonymous witnesses. The detaining authority considered the activities of the detenu as that of a bootlegger as defined under the PASA Act and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

4. Learned advocate for the petitioner has restricted his arguments only on the point that there is improper exercise of powers under Section 9 (2) of the PASA Act. He has drawn drawn attention of this Court to the fact that the whole exercise done by the detaining authority in a day i.e. the whole bunch of the papers were submitted before the detaining authority and he verified the statements of anonymous witnesses on the same day and the detention order passed on the very day. The authority, therefore, had no time to undertake the exercise of verifying the correctness and genuineness of the fear expressed by the witnesses qua the detenu. For that he has relied upon the judgment reported in 1993 (2) GLR 1659 wherein it is held as under :

> " There is a provision under section 9 (2) carved out on the basis of Article 22 (5) of the Constitution which provides that nothing in sub-section (1) shall require the authority making such order to disclose facts which it considers to be against the public interest to disclose. Therefore, it is the duty of the detaining authority to strike a balance as stated above, that in the public interest, the names and addresses of the witnesses could not be disclosed. This should not be treated as an idle formality as it affects the public interest on the one hand and the right of the detenu on the other. When that is so, the detaining authority

is expected to do some exercise before actually exercising the privilege under section 9 (2) of PASA. Looking to the facts and circumstances of the case, it is clear, as stated hereinabefore, that the verified statements were also placed before the detaining authority and there was no sufficient time for the detaining authority to examine the possibility of exercising the power under section 9 (2), as the proposal was made on 16th October, 1992 and the order of detention was passed on the following day i.e.,17th October, 1992, nor is there any material to show as to how he examined the necessity of exercising the power under section 9 (2). Under the circumstances, in our view, it is a wrong exercise of power under section 9 (2) which has affected the detenu's right of making an effective representation under Article 22 (5) of the Constitution of India and therefore, the continued detention of the detenu is bad and illegal and the impugned detention order is required to be quashed and set aside ".

5. Learned counsel for the petitioner submitted further that the offences registered against the detenu do not indicate any disturbance to public order and, therefore, the subjective satisfaction recorded by the detaining authority regarding the activities of the detenu being detrimental to public order is without any basis and the petition may, therefore, be allowed.

6. Mr. S.J.Dave, learned A.G.P. for the respondent-State has opposed this petition on the ground that merely the authority has acted promptly does not mean that it has not applied mind or it has not verified the statements in the manner in which the same are required to be verified as per Section 9 (2) of the Act.

7. Considering rival side contentions, it appears that the statements of anonymous witnesses have been recorded on 16-7-2000 and 17-2-2000. The same have been verified by the the detaining authority on 18-2-2000 and the order is passed on that very day. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority completed the whole exercise of passing of detention order including verification of the statements of anonymous witnesses and also passed the order of detention on the same day, but the same is not permitted in view of the decision rendered by this Court reported in 1993 (2) GLR 1659 (Supa). So the points raised by the petitioner are fully covered by the decision reported in 1993 (2) GLR 1659,

and therefore, the petitioner is able to succeed only on that point. Therefore, learned counsel for the petitioner has restricted his arguments only on that point and not pressed other points.

8. In view of the above discussion, the reliance placed on by the detaining authority on the statements of anonymous witnesses and the registered offences cannot be upheld. The order of detention as well as the continued detention both are rendered bad in law. The petition, therefore, deserves to be allowed.

9. In the result, the petition is allowed. The impugned order of detention dated 18-2-2000, passed against the detenu is hereby quashed. The detenu Yasinkhan Jivankhan Pathan is ordered to be set at liberty, if he is not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

05-07-2000 (R.P.Dholakia, J.)

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